

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

UNITED STATES OF AMERICA,
ex rel. JON H. OBERG,

Plaintiff,

V.

NELNET, INC., *et al.*,

Defendants.

CIVIL NO. 1:07-CV-960-CMH-JFA

MOTION OF DEFENDANTS NELNET, INC., NELNET EDUCATION LOAN FUNDING, INC., PANHANDLE PLAINS HIGHER EDUCATION AUTHORITY, PANHANDLE PLAINS MANAGEMENT AND SERVICING CORPORATION, SLM CORPORATION, SOUTHWEST STUDENT SERVICES CORPORATION, EDUCATION LOANS INC., STUDENT LOAN FINANCE CORPORATION, BRAZOS HIGHER EDUCATION AUTHORITY, AND BRAZOS HIGHER EDUCATION SERVICE CORPORATION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL AND MEMORANDUM IN SUPPORT THEREOF

Pursuant to Local Civil Rule 5, ¶ 12 of the Court’s Rule 16(b) Scheduling Order [Dkt. 174], and ¶ 13 of the Court’s January 25, 2010 Stipulation and Order Governing Confidential Information [Dkt. 179], Defendants Nelnet, Inc., Nelnet Education Loan Funding, Inc., Panhandle Plains Higher Education Authority, Panhandle Plains Management and Servicing Corporation, SLM Corporation, Southwest Student Services Corporation, Education Loans, Inc., Student Loan Finance Corporation, Brazos Higher Education Authority, and Brazos Higher Education Service Corporation (collectively, “Moving Defendants”) hereby move this Court for

leave to file under seal any exhibits to their forthcoming summary judgment motions that have been designated Confidential or Highly Confidential.¹

Relator and Moving Defendants are presently preparing motions for summary judgment or partial summary judgment and supporting exhibits, which will be filed with the Court on June 18, 2010, pursuant to the Court's May 27, 2010 Order [Dkt. 252]. At this time, Moving Defendants anticipate that they may need to incorporate exhibits into their motions for summary judgment that have been designated as Confidential or Highly Confidential in accordance with the Stipulation and Order Governing Confidential Information. Such exhibits could include documents provided by both parties and non-parties to this matter, and would include, *inter alia*, commercially sensitive information related to the financial or business plans of the Moving Defendants and sensitive non-public emails produced by non-parties. Moving Defendants believe that sealing is necessary in order to protect the producing party from the harm that could arise from immediate disclosure of this information. *See Level 3 Comm'ns, Inc. v. Limelight Networks, Inc.*, 611 F. Supp. 2d 572 (E.D. Va. 2009) (holding that private interests, including the interest in protecting trade secrets, may override the public right of access).

Moving Defendants will make a good-faith effort to seek permission from the producing party to lift any Confidential or Highly Confidential designations prior to filing, so as to obviate the need to file under seal. However, in the event that Moving Defendants do not obtain permission to lift the designation prior to filing, Moving Defendants ask that the Court grant leave to file any such exhibits under seal. Moving Defendants further propose that the seal would be maintained for 30 days from the date that the reply briefs to the motions for summary judgment are filed. During that time, Moving Defendants will notify the producing party that its

¹ Moving Defendants have provided a copy of this motion to counsel for Relator, who is considering the proposal but has not taken a position on the proposed relief.

Confidential or Highly Confidential information has been submitted to the Court, so that the producing party may move for a protective order to maintain the seal beyond the 30-day period.

CONCLUSION

For the foregoing reasons, Moving Defendants respectfully request that this Court grant permission to file under seal any documents marked Confidential or Highly Confidential that are attached to their motions for summary judgment, for a period of 30 days following the date of the filing of the reply briefs to the motions for summary judgment.

Dated: June 4, 2010

Respectfully submitted,

/s/ Don Bradford Hardin, Jr.
Don Bradford Hardin, Jr. (Va. Bar No. 76812)
Jody Manier Kris (pro hac vice)
Christopher E. Babbitt (pro hac vice)
Matthew T. Jones (pro hac vice)
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
Bradford.Hardin@WilmerHale.com
*Counsel for Education Loans Inc. and
Student Loan Finance Corp.*

/s/ Warren Neil Eggleston
Warren Neil Eggleston (Va. Bar No. 18367)
Debevoise & Plimpton LLP
555 13th Street NW, Suite 1100E
Washington, DC 20004
Telephone: (202) 383-8000
Facsimile: (202) 383-8118
wneggleston@debevoise.com
*Counsel for SLM Corp. and Southwest Student
Services Corp.*

/s/ Robert S. Lavet

Robert S. Lavet
Larry S. Gondelman
Powers Pyles Sutter & Verville PC
1501 M Street NW, 7th Floor
Washington, DC 20005
Phone: 202-466-6550
Fax: 202-785-1756
rob.lavet@ppsv.com
*Counsel for Nelnet, Inc. and
Brazos Higher Education Service
Corporation*

/s/ Timothy J. McEvoy

Timothy J. McEvoy
Cameron McEvoy, PLLC
11325 Random Hills Road, Suite 200
Fairfax, VA 22030
Phone: 703-273-8898
Fax: 703-273-8897
tmcevoy@cameronmcevoy.com
*Counsel for Panhandle Plains Higher
Education Authority and Panhandle Plains
Management and Servicing Corp.*

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June 2010, the Motion of Defendants for Leave to File Documents Under Seal and Memorandum in Support Thereof, along with the accompanying Notice of Hearing and Proposed Order, were electronically filed with the Clerk of Court using the CM/ECF system. The electronic filing prompted a notification of such filing (NEF) to the following:

Michael L. Sturm
Wiley Rein LLP
1776 K Street, NW
Washington, D.C. 20006
(202) 719-7000
(202) 719-7049 (facsimile)
msturm@wileyrein.com
Counsel for Qui Tam Relator Jon H. Oberg

Christopher M. Mills
Wiley Rein LLP
7925 Jones Branch Drive
Suite 6200
McLean, VA 22102
(703) 905-2800
(703) 905-2820 (facsimile)
cmills@wileyrein.com
Counsel for Qui Tam Relator Jon H. Oberg

R. Scott Oswald
The Employment Law Group, P.C.
888 17th Street, NW, Suite 900
Washington, D.C. 20006
(202) 261-2806
(202) 261-2835 (facsimile)
soswald@employmentlawgroup.com
Counsel for Qui Tam Relator Jon H. Oberg

Gerard J. Mene
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314
(703) 299-3700
(703) 299-3983 (facsimile)
gerard.mene@usdoj.gov
Attorney for the United States of America

Nathaniel Thomas Connally, III
Hogan & Hartson LLP (VA)
7930 Jones Branch Drive
McLean, VA 22102-3302
(703) 610-6100
(703) 610-6200 (facsimile)
ntconnally@hhlaw.com
Counsel for Arkansas Student Loan Authority

David Michael Kopstein
Kopstein & Perilman
8633 Cross Chase Court
Fairfax Station, VA 22039
(301) 552-3330
dkopstein@cox.net
Counsel for Brazos Higher Education Service Corporation and Nelnet, Inc.

Sean T. Beller
Powers Pyles Sutter & Verville PC
1501 M Street, NW
Seventh Floor
Washington, DC 20005-1700
Telephone: (202) 872-6768
Facsimile: (202) 785-1756
Sean.beller@ppsv.com
*Attorney for Brazos Higher
Education Service Corporation*

W. Neil Eggleston
Debevoise & Plimpton LLP
555 Thirteenth Street, NW, Suite 1100E
Washington, D.C. 20004
Phone: (202) 383-8140
wneggleston@debevoise.com
*Counsel for SLM Corporation and Southwest
Student Services Corporation*

Thomas L. Appler
Wilson, Elser, Moskowitz, Edelman
& Dicker LLP
8444 Westpark Drive, Suite 510
McLean, VA 22102
(703) 245-9300
(703) 245-9301 (facsimile)
thomas.appler@wilsonelser.com
*Counsel for Kentucky Higher Education
Student Loan Corporation*

John Stone West
Troutman Sanders LLP
1001 Haxall Point
Richmond, VA 23219
(804) 697-1269
(804) 698-5138 (facsimile)
john.west@troutmansanders.com
*Counsel for Vermont Student Assistance
Corporation*

Heather Austin Jones
Wilson, Elser, Moskowitz, Edelman
& Dicker LLP
8444 Westpark Drive, Suite 510
McLean, VA 22102
(703) 245-9300
(703) 245-9301 (facsimile)
heather.jones@wilsonelser.com
*Counsel for Kentucky Higher Education
Student Loan Corporation*

Timothy J. McEvoy
Cameron McEvoy, PLLC
11325 Random Hills Road, Suite 200
Fairfax, VA 22030
(703) 273-8898
(703) 273-8897 (facsimile)
tmcevoy@cameronmcevoy.com
*Counsel for Panhandle Plains Higher
Education Authority*

Jill Marie Dennis
Hunton & Williams
1751 Pinnacle Drive, Suite 1700
McLean, VA 22102
(703) 714-7400
jmdennis@hunton.com
*Counsel for Pennsylvania Higher Education
Assistance Agency*

Mark E. Nagle
Troutman Sanders LLP
401 9th Street NW, Suite 1000
Washington, D.C. 20004
(202) 274-2972
(202) 654-5666 (facsimile)
mark.nagle@troutmansanders.com
*Counsel for Vermont Student Assistance
Corporation*

Megan Conway Rahman
Troutman Sanders LLP
1001 Haxall Point
P.O. Box 1122
Richmond, VA 23218-1122
(804) 697-1200
megan.rahman@troutmansanders.com
*Counsel for Vermont Student Assistance
Corporation*

Tameka Meshaun Collier
Troutman Sanders LLP
401 9th Street NW, Suite 1000
Washington, D.C. 20004
(202) 274-2950
(202) 274-2994 (facsimile)
tameka.collier@troutmansanders.com
*Counsel for Vermont Student Assistance
Corporation*

I hereby certify that I caused the foregoing documents to be mailed by U.S. mail to the
following non-filing user:

Jay Majors, Esq.
U.S. Department of Justice, Civil Division
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044

/s/
Don Bradford Hardin, Jr. (Va. Bar No. 76812)
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
Justin.Fairfax@wilmerhale.com

*Counsel for Education Loans, Inc. and
Student Loan Finance Corp.*